Supreme Court, U.S.
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No. 93-1404

In The

Supreme Court of the United States

October Term, 1993

BRENDA MARTIN,

Petitioner,

v.

FLORIDA POWER CORPORATION,

Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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April 7, 1994

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QUESTIONS PRESENTED

1. Whether the courts below correctly ruled that the undisputed and uncontested factual background which led to Petitioner's termination, coupled with Petitioner's inability to present any evidence, other than unsupported speculation and conclusory assertions, toward establishing either a prima facie case of intentional discrimination or pretext mandated the entry of summary judgment as to Petitioner's claims of race discrimination.

2. Whether the courts below correctly ruled that Petitioner's speculation was legally insufficient to support an inference of retaliatory intent sufficient to prevent the summary dismissal of Petitioner's claim of retaliation, where Petitioner admitted to the factual background leading to her termination, acknowledged that the passage of well over a year's time weakened any inference of retaliation, and failed to present any evidence of causality.

PARTIES

Petitioner, Brenda Martin ("Martin"), is an individual resident of St. Petersburg, Florida.

Respondent, Florida Power Corporation ("Florida Power"), is a Florida Corporation with its principal place of business in St. Petersburg, Florida. Its parent company is Florida Progress Corporation, headquartered in St. Petersburg, Florida. Florida Power Corporation has no nonwholly owned subsidiaries.

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

Respondent Florida Power Corporation respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by the Petitioner Brenda Martin.

OPINIONS BELOW

On its non-argument calendar, the Eleventh Circuit Court of Appeals affirmed the trial court's entry of summary judgment, dismissing both of Martin's claims. Neither courts' opinion is published. They are reproduced in the appendix to Martin's Petition for Writ of Certiorari.

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the decision of the Court of Appeals on petition for certiorari pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The dispute in this case arises solely from the application of Fed. R. Civ. Proc. 56 to the Civil Rights Act of 1964, 42 U.S.C. Section 2000e *et seq.* Despite Petitioner's claims, raised for the first time in her Petition, this dispute does not involve Amendments I, V, or VI to the Constitution of the United States. Petitioner Martin's claims do not allege any state action, but involve only private conduct by private actors. They do not, therefore, state a cause of action for which the United States Constitution affords relief. *See e.g., Youakim v. Miller*, 425 U.S. 231, 234 (1976); *Lugar v. Edmondson Oil Company, Inc.*, 457 U.S. 922, 936-937 (1982).

STATEMENT OF THE CASE

The Proceedings Below

Petitioner Brenda Martin filed suit in federal district court in Florida alleging that Respondent Florida Power Corporation terminated her employment because of her race and in retaliation for filing prior charges of discrimination in violation of Title VII of the Civil Rights Act. After full discovery, Florida Power filed a motion for summary judgment, asserting that the undisputed facts established as a matter of law that Martin was terminated for her failure to cooperate in an internal investigation of missing monies – reasons unrelated to her race and/or her prior claims of racial discrimination. Florida Power's motion was based largely on facts stipulated by the parties in their joint pretrial order. In her opposition to the motion, Martin adopted Florida Power's statement of the facts and offered supplemental assertions, largely in the form of speculation. The district court granted summary judgment and dismissed Martin's case in its entirety.

Martin subsequently filed a motion for reconsideration, and thereafter filed both a memorandum and a supplemental memorandum in support thereof. Florida Power opposed this motion, noting that the motion was again without any evidentiary support. The district court denied Martin's motion for reconsideration, and Martin, proceeding for the first time *pro se*, appealed to the Eleventh Circuit. That court affirmed the judgment of the district court.

On May 19, 1993, Martin filed her Petition for Certiorari. By correspondence dated June 4, 1993, the Court rejected Martin's Petition as it failed to comply with the

Court's Rules of Procedure. After receiving notification from the Court that it considered the Petition to have been abandoned, Martin filed her corrected Petition in mid March 1994.

The Factual Record

Respondent Florida Power refers this Court to the Order of United States District Judge Ralph W. Nimmons, Jr. reproduced at pages B-1 through B-23 of the Appendix to the Petition for an accurate statement of the facts of this case.

Response to Martin's Statement of the Case

The "Statement of the Case" on pages 5 through 19 of Martin's Petition contains numerous assertions that are unsupported in the record, misleading, or irrelevant to this case.

For the first time in her Petition, Martin makes a number of allegations that her civil and constitutional rights have been violated. Martin states that a Florida Power employee "yelled at her to 'Shut Up, Be Quiet', he's handling this!" and that this statement violated her civil and constitutional rights. Petition, pp. 6-8. Similarly, Martin contends that the decisionmaker Moore violated her constitutional rights by refusing to intervene in a routine, workplace dispute between Martin and a co-employee. Petition, pp. 16-18. These alleged violations of Martin's civil and constitutional rights were neither resolved nor raised at any time in these proceedings until the filing of the instant Petition. As these contentions are

raised for the first time herein, they are not properly before this Court. Further, because they involve only private conduct by private actors, these assertions do not state a cause of action for which the United States Constitution affords relief.

Similarly, Martin's assertion that "Respondents stated on their depositions that the police dept. was conducting an investigation and Petitioner did not cooperate . . . was not a true statement" is misleading. Petition, p. 9. In making this statement, Martin is apparently again raising a contention, which was specifically addressed by the district court, that the investigation was conducted by Florida Power and not the police department. In addition, she appears to raise a new contention that her June 18 correspondence to Florida Power was "sent in 'Good Faith' " and not intended to be insubordinate. Petition, pp. 9-10, 13-14.

As to the first point, while Martin continues to make much of the fact that it was Florida Power, not the police, who conducted the investigation, that fact is not only irrelevant but it is also not in dispute. Indeed, in granting summary judgment, the district court found, "In May of 1988 *Florida Power* initiated another investigation". (R2-64-3). (Emphasis added.) Further, it is immaterial that Florida Power continued to investigate after the police determined not to bring formal, criminal charges because they deemed the matter to involve an internal problem. (*See* R2-37-3).

Martin's second, "good faith" contention is novel to this petition and indicative of Martin's tendency to raise new arguments and create new evidence where others

have failed. Because it is raised for the first time in this petition, it is not properly before this Court. In addition, it is not based upon any evidentiary support in the record, but mere supposition and opinion on Martin's part.

In addition, Martin now contends that Florida Power's failure to consider her letter as an appropriate response also violated her civil and constitutional rights. Martin apparently argues that, because the letter was sent in accordance with instructions from her attorney, Florida Power's rejection of that letter violated her right to counsel. Again, as this argument is made for the first time in this petition, it is not properly before this Court. Were it properly before this Court, it nevertheless fails as it concerns conduct by private actors for which the United States Constitution does not afford relief.

Martin's assertion that "the only time police was notified was when the Petitioner was supposedly the suspect" is also misleading. Petition, p. 11. The statement incorrectly and improperly implies that Florida Power was aware that Martin was somehow involved in instances of missing monies and that this knowledge prompted it to contact the police. The record evidence, in contrast, establishes that Florida Power never identified any specific suspect prior to police involvement. As to the investigation in 1986, that evidence establishes that Ehrman contacted the police because the amount of missing monies was large ($600) and that no one had identified a particular suspect to him. (R1-23-Ex.2, p. 6). The evidence further showed that Martin was one of five individuals who were questioned because each of the five had access to the missing funds. (R1-23-Ex.3, pp. 50-54; R1-23-Ex.4,

Defendant's Response No. 8 to Plaintiff's Fourth Interrogatories; R1-23-Ex.4, Defendant's Response Nos. 7 and 9 to Plaintiff's Third Interrogatories). Similarly, the police were contacted in the course of the 1988 investigation after unidentified blue fingerprints appeared on the door to the safe. It was not until the hands of all employees were checked that it was discovered that the fingerprints belonged to Martin. (R1-23-Ex.2, p.22; R1-23-Ex.1, pp. 26-28; R1-23-Ex.3, pp. 59-60).

Martin's contention that she "knows of another incident in '1987', where Jill Haseltine, a white female employee was short several hundred dollars . . . " is unsupported by affidavit or other evidence and contrary to Martin's prior statements. In fact, the allegation was raised in the form of argument for the first time in the body of Martin's appellate brief. (Brief of Appellant, pp. 7, 10). The facts alleged at that time and herein are contrary to the only record evidence on this point – Martin's statements to the Equal Employment Opportunity Commission. In those statements, Martin contended Haseltine had shortages of 50¢ and $20, which were occasioned by balancing errors in the calculator tape. She further admitted that the $20 error was discovered and that she does not know if the 50¢ was also found. (Defendant's Exhibit 21 to Plaintiff Depo.). [As Martin raised this issue for the first time on appeal, this evidence is not included in the record, but was made part of the Appendix filed by Appellee Florida Power.] Such admissions are further bolstered by Martin's deposition testimony that she believed only that there may have been balancing errors (as opposed to the documented

theft of coin rolls, which occasioned the 1988 investigation) of $20 on a couple of occasions, but that *she* never heard anything else about these incidents. (R1-23-Ex.3, p. 55). In fact, Martin's knowledge concerning these and other potential "losses" is based, not on any personal knowledge, but simply on the fact that she was not involved in other investigations. (R1-23-Ex.3, pp. 55-56).

Martin's contentions that her prior complaints of discrimination "were in Petitioner's office file in [the decisionmaker's] Moore's office", that one "could infer that [Moore] was very much aware of what was in the file" and that "when the '87' complaint was resolved, Moore gave the records to Edna Jones, Florida Power's EEOC Representative" are also without any evidentiary support and contrary to the evidence in the record. Petition, pp.14-15. *See* R1-23-Ex.3, pp. 29-30 (wherein Martin admits she has no personal knowledge as to the contents of her employment file). Indeed, the contention that Moore gave records to Jones appears for the first time in Martin's Petition; like the other assertions it is based upon conjecture, rather than record evidence. The undisputed, competent evidence in the record establishes, in contrast, that Moore was not familiar with Martin's prior complaints of discrimination and that she was unaware of any subsequent complaints, during the time that she supervised Martin (R1-23-Ex.1, pp. 6-8).

Finally, Martin claims that "the Courts decided in favor of Florida Power, stating that too much time has passed for a retaliation claim". Petition, p. 15. In its decision, the district court actually noted that Martin, in her opposition to summary judgment, acknowledged that a time lapse between the protected activity and the

adverse employment action weakens any inference of retaliation. R2-64-11; (R1-32-10-11). The court then went on to note that Martin's sole evidence of retaliation consisted of her theory that Florida Power waited this period of time before terminating her employment so that she would have a difficult time proving any subsequent claim of retaliation. The court also noted that Florida Power did not immediately terminate Martin after the dye was discovered on her hand, but undertook extensive efforts to contact her to cooperate in the investigation, and that it was only after Martin failed to indicate any willingness to cooperate that she was terminated. These undisputed facts, coupled with the absence of any competent evidence of causation or intent, properly led the court to order the dismissal of Martin's claim. *Id.*

SUMMARY OF ARGUMENT

1. **Race Claim**. A Title VII plaintiff alleging disparate treatment must prove that the defendant acted with discriminatory purpose. To prevail, a plaintiff must first establish a *prima facie* case of employment discrimination on the basis of race. As Martin's replacement is a member of the same protected group as she, to meet her *prima facie* burden she must have established that she was terminated for misconduct which was nearly identical to that engaged in by a non-protected group employee whom Florida Power retained. The undisputed evidence precluded Martin from making any such showing.

Since Martin was the only employee who had blue dye on her hand, she was the only employee required to

participate further in the 1988 investigation. Further, Martin was the only employee who refused to cooperate in any investigation. Indeed, the only Florida Power employee who arguably engaged in identical conduct was Martin herself, when despite her failure to cooperate with an investigation in September of 1986, she was nevertheless retained. Since there is no evidence of preferential treatment of a comparably situated white employee, Martin did not establish even a *prima facie* case of discriminatory discharge.

Assuming *arguendo* that Martin could meet this *prima facie* hurdle, she conceded that Florida Power has articulated a legitimate, nondiscriminatory rationale for her termination (R1-32-5). The articulation of this rationale destroys any presumption of race-based discrimination created by any *prima facie* showing. Thus, to preclude the entry of summary judgment for Florida Power, Martin must have shown by a preponderance of the evidence that the reasons articulated by Florida Power were a pretext for illegal discrimination. Martin offered no evidence to support or suggest pretext and did not even dispute the factual basis which resulted in her termination. Martin's sole contention, raised for the first time in her Petition, is that her letter was a "good faith" response to Florida Power's repeated and diligent efforts to obtain her cooperation in its investigation. As Martin's opinion is without evidentiary support and as it merely questions Florida Power's legitimate business judgment, it is not competent to withstand summary dismissal of her claim.

Apparently cognizant of her inability to produce any evidence whatsoever of disparate treatment or pretext, Martin attempts to avoid the application of Rule 56 by

challenging the facts of Florida Power's investigations over missing funds. Such testimony consists solely of conclusory and hypothetical allegations without record support and is, thus, legally insufficient to raise any inference of pretext or intentional discrimination. As Martin failed to produce evidence sufficient to meet any of the essential elements of her claims of race discrimination, the district court properly granted summary judgment.

2. **Retaliatory Discharge Claim.** To establish even a *prima facie* case of retaliatory discharge, Martin must have shown a causal connection between her protected activity and her termination. Martin was terminated almost 15 months after the final conciliation of her charges. Having acknowledged in opposition to summary judgment that a lengthy passage of time weakens any possible inference of discrimination, she now contends that the interval should be measured from her disagreement with Moore over her 1987 evaluation (some eight months). Her argument is misplaced, however, as the interval measured is that between the protected conduct and the adverse employment action. Because Martin has at no time contended that the disagreement over the evaluation involved either her race or prior claims of discrimination, it does not constitute protected conduct. Other than her argument that the time frame should be shortened, there is no evidence of causality except the fact that her separation chronologically followed her protected conduct. Such evidence is legally insufficient to support an inference of retaliation.

Further, as previously noted, Martin not only conceded that Florida Power articulated legitimate, nondiscriminatory reasons for her termination, but also admitted to the facts which led to the termination decision. As Martin failed to present any competent evidence, much less the required preponderance, to establish the essential elements of her *prima facie* case or to prove retaliatory intent, the district court's grant of summary judgment was proper.

ARGUMENT

There exists no compelling reason to justify the granting of a writ of certiorari in this case. As will be discussed below the lower courts fully considered the record evidence and correctly applied established law to the issues. The decision in this case is not in conflict with the either the decisions of the United States Supreme Court or the decisions of the various courts of appeals. The decision does not depart from the accepted and usual course of judicial proceedings, nor does it sanction such a departure by a lower court, as to call for an exercise of the Court's power of supervision. Finally, the decision in this case involved no important question of federal law which has not been, but should be, settled by this Court, nor did it decide a federal question that conflicts in any way with the applicable decisions of this Court.

Race Claim

To establish even a *prima facie* case of racial discrimination, Martin must have introduced evidence sufficient

to create an inference that her termination decision was based upon a factor prohibited by Title VII. *E.g., Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981). As the parties stipulated that, subsequent to Martin's termination, her position was abolished and a similar position filled by a black female (R2-43-9), the lower court properly determined that Martin must have established that "the misconduct for which [she] was discharged was nearly identical to that engaged in by an employee outside the protected class whom [Florida Power] retained." *Nix v. WLCY Radio/Rahall Communications*, 738 F.2d 1181, 1185 (11th Cir. 1984), *reh'g denied*, 747 F.2d 710 (1984); *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273 (1976).

Martin failed to produce *any* evidence that she was terminated for insubordination while other employees, who engaged in identical conduct, were retained. In fact, as noted by the district court, the undisputed record evidence actually precluded Martin from making any such showing. While Martin alone was questioned with regard to the loss of funds in 1988, such evidence lacks the required similarity to be of any legal consequence. At the time of this investigation, the record established that the hands of all employees were checked for blue dye, but none other than Martin's evidenced the presence of dye. As a matter of law, therefore, Martin was not similarly situated to the other branch employees so as to raise any inference of discrimination. *Nix*, 738 F.2d at pp. 1185-87. Further, the evidence established that Martin was not only the sole employee found to have blue dye on her hand, but she was also the only employee who refused to cooperate in any investigation over missing

funds. Indeed, the only employee who arguably engaged in such identical conduct was Martin herself – when two years earlier she failed to fully cooperate in another investigation, but was retained.

Having failed to present any evidence to the district court of the required disparity, for the first time on appeal (and again for the first time in the instant Petition) Martin attempted to create examples of such disparity. Martin has now argued both that Florida Power involved the police only when she was a suspect in an investigation and that employee Haseltine experienced large losses of funds, which were not investigated. As these matters were not presented for consideration by the lower courts, they are not properly before this Court. *See e.g., Youakim v. Miller*, 425 U.S. 231, 234 (1976).

Additionally, as noted *supra* in Respondent's Response to Martin's Statement of the Case, these assertions are unsupported by affidavit or other evidence and raised only in the form of argument for the first time in the body of Martin's briefs.

Martin has failed to produce – at either the summary judgment stage, reconsideration stage, on appeal, or in the instant Petition – any competent evidence in support of these speculative assertions. They are, therefore, legally insufficient to raise any inference of pretext or intentional discrimination. *Carter v. City of Miami*, 870 F.2d 578 (11th Cir. 1989); *Castle v. Sangamo Westin, Inc.*, 837 F.2d 1550 (11th Cir. 1988); *Elliott v. Group Medical & Surgical Service*, 714 F.2d 556, 564 (5th Cir. 1983), *cert. denied*, 467 U.S. 1215 (1984).

Martin's conclusions are, further, contrary to the record evidence in this case. Contrary to Martin's argument that Florida Power involved the police only when she was a suspect, the undisputed evidence established that Florida Power never identified any specific suspect prior to police involvement. As to the 1986 investigation, that evidence established that police were contacted because the amount of money missing was large and that no particular suspect had been identified. (R1-23-Ex.2, pp. 8-10)[1]. The evidence further showed that Martin was one of five individuals who were questioned because each of the five had access to the missing funds. (R1-23-Ex.3, pp. 50-54; R1-23-Ex.4, Defendant's Response No. 8 to Plaintiff's Fourth Interrogatories; R1-23-Ex.4, Defendant's Response Nos. 7 and 9 to Plaintiff's Third Interrogatories). In the 1988 investigation, the police were contacted after unidentified blue fingerprints appeared on the door to the safe. It was not until after the police arrived that the hands of all employees were checked and that it was discovered that the fingerprints belonged to Martin. (R1-23-Ex.2, p.22; R1-23-Ex.1, pp. 26-28; R1-23-Ex.3, pp. 59-60).

Martin's contention concerning employee Haseltine not only contradicts undisputed record evidence but is also contrary to Martin's prior statements to the Equal Employment Opportunity Commission and her own

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[1] Because this contention is newly raised herein, portions of the cited testimony from Ehrman's deposition are not in the record. Should the Court find it necessary to review this testimony, Respondent will gladly submit same for review.

deposition. In those statements, Martin contended Haseltine had small shortages occasioned by balancing errors, not theft. She further admitted that her information concerning these and other potential "losses" was based, not on any personal knowledge, but simply on the fact that she was not involved in other investigations. (R1-23-Ex.3, pp. 55-56).

Moreover, the comparative evidence in the record established that Florida Power investigated non-protected group members with access to funds and required those employees to fully cooperate in its ongoing investigations. In the course of its 1986 investigation at least one other Florida Power employee, MacBroom, a white person, was investigated along with Martin (and three bank employees). Indeed, the undisputed evidence established that MacBroom even agreed to polygraph testing upon request by Florida Power. In the course of its 1988 investigation, Florida Power first dusted trays at a time when Martin was not even in the office. Further, the hands of *all* branch employees were checked for the presence of dye.

Finally, Martin's theories as to the reasons for and manner of investigations are irrelevant. As correctly found by the lower courts, Martin was terminated, not as a result of any investigation, but because of her failure to communicate a willingness to cooperate in an investigation, despite repeated and numerous attempts by Florida Power to obtain her cooperation. It is mere speculation to assume that Martin would have been terminated had she in fact cooperated with that investigation. Thus, it was not "but for" or "because of" the investigation that Martin was discharged; rather, Martin's termination resulted

from and *because of her failure to cooperate in the investigation.* As Martin's termination occurred because of *her active* refusal to cooperate, it was not occasioned because of her race – thereby precluding recovery on this claim. *McCarthney v. Griffin-Spalding County Board of Education,* 791 F.2d 1549 (11th Cir. 1986).

As a result, there is a complete absence of evidence from which to infer that Martin was terminated because of her race. Inasmuch as Martin failed to establish even a *prima facie* case of racial discrimination, summary judgment was correctly granted to Florida Power. Assuming *arguendo* that Martin's evidence supported a *prima facie* showing, the lower courts found that summary judgment was nevertheless warranted as Florida Power established legitimate, non-discriminatory reasons for the termination *and* as the record contained no competent evidence which even remotely suggests that those reasons were a pretext for illegal discrimination. *See Young v. General Foods Corporation,* 840 F.2d 825, 828-29 (11th Cir. 1988), *cert. denied,* 488 U.S. 1004 (1989); *accord, Mauter v. Hardy Corp.,* 825 F.2d 1554, 1558 (11th Cir. 1987).

As even Martin admitted, Florida Power articulated legitimate, nondiscriminatory reasons for her termination – her failure to cooperate or communicate her willingness to cooperate in an ongoing investigation. In light of such evidence, it was incumbent upon Martin to show that Florida Power's proffered reasons were not only a pretext, but a *pretext for illegal discrimination. Burdine,* 450 U.S. at p. 259; *St. Mary's Honor Center v. Hicks,* ___ U.S. ___, 125 L.Ed.2d 407 (1993). As the lower courts correctly found, Martin not only failed to provide such evidence

but, indeed, did not even dispute the facts which resulted in her termination.

Martin admitted that she refused to acknowledge or respond to Florida Power's repeated efforts to contact her until she received its certified correspondences that her failure to communicate her agreement to cooperate in the investigation would result in her termination. She admitted that she was fully aware, once she finally picked up these letters, that her job was in serious jeopardy. Nevertheless, Martin's only response was her June 18th letter, which notified Florida Power that any contact with her must be by mail. As noted by the lower courts, such communication, on its face, failed to evidence agreement or willingness to cooperate (R1-23-Ex.3, pp. 66-67, 70-74, 78-80, 94-95, 102; R1-23-Ex.3, Defendant's Ex. 8).

As her only "evidence" of pretext, Martin now contends that this communication should have been accepted as a "good faith" contact. Martin asserts that, despite already having unsuccessfully attempted personal, telephone, and written communication, Florida Power should have sent yet a third letter seeking her cooperation rather than terminating her employment. Martin's argument is misplaced, however, as is does no more than question the business judgment of Florida Power. It is, therefore, clearly insufficient to raise any issue of fact. *Nix v. WLCY Radio*, 738 F.2d 1181, 1187 (11th Cir. 1984). Because Martin wholly failed to carry her burden of establishing that her termination was because of her race, summary judgment was appropriately entered on her claim of discriminatory discharge.

Retaliatory Discharge Claim

To establish even a *prima facie* case of retaliatory discharge, Martin must have shown a causal connection between her protected activity and her termination. *Bigge v. Albertsons, Inc.*, 894 F.2d 1497, 1501 (11th Cir. 1990). Martin was terminated almost 22 months after filing her last charge alleging discrimination and 15 months after the final conciliation of that charge. Having acknowledged in opposition to summary judgment that a lengthy passage of time weakens any possible inference of discrimination, she now contends that the interval should be measured from her disagreement with Moore over her 1987 evaluation (some eight months). Her argument is misplaced, however, as the interval measured is that between the protected conduct and the adverse employment action. Because Martin has at no time contended that the disagreement over the evaluation involved either her race or prior claims of discrimination, it does not constitute protected conduct. Save her argument that the time frame should be shortened, there is no evidence of causality other than the fact that her separation chronologically followed her protected conduct. Such evidence is legally insufficient to support an inference of retaliation. *See e.g., Fuchs Baking*, 43 Fair Empl. Prac. Cas. (BNA) 752, 760 (S.D. Fla. 1987).

Further, as previously noted, Martin not only conceded that Florida Power articulated legitimate, nondiscriminatory reasons for her termination, but also admitted to the facts which led to the termination decision. As Martin failed to present any competent evidence, much less the required preponderance, to establish the

essential nexus element of even her *prima facie* case or to prove retaliatory intent, the district court's grant of summary judgment was proper.

While Florida Power contended that the evidence established that the decisionmaker in this case, Moore, had no knowledge Martin's complaints of discrimination (R1-23-Ex.1, pp. 6-8), the lower courts' decision did not rely on this basis. Martin's contentions of knowledge, while unsupported and contrary to the record evidence, are not relevant to this proceeding.

CONCLUSION

Florida Power presented incontrovertible evidence affirmatively demonstrating that Martin was unable to establish the existence of every element essential to her claims and on which she would bear the burden of proof at trial. This showing having been made, the lower court properly shifted to Martin the burden of going beyond the pleadings by identifying *specific, competent* evidence from which a trier of fact could reasonably find for the plaintiff, by demonstrating the existence of a genuine issue for trial. As properly determined by the lower courts, Martin fell far short of carrying this burden. For this reason, the lower courts did not err in granting and affirming summary judgment for Florida Power. *Celotex*

Corp. v. Catrett, 477 U.S. 317, 323-24, 331 (1986); Fed. R. Civ. P. 56.

Respectfully submitted,

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